In the High Court for the States of Punjab and Haryana, at Chandigarh.

R.S.A.No. 318 of 2003
Decided on Oct 05 ,2007

Jagdish -- Appellant

vs.

Rajwanti -- Respondent

Present: Mr. Alok Jain,Advocate, for the appellant
Mr.Kulbir Narwal,Advocate,for the respondent.

Permod Kohli,J:

This Regular Second Appeal is directed against the judgment and decree dated November 23,2002, passed by Addl. District Judge, Rohtak, setting aside the judgment and decree dated December 22,1998, passed by Civil Judge (Junior Division), Rohtak.

The appellant herein, is the defendant in the suit filed in the Court of Civil Judge (Junior Division), Rohtak, by the respondent, challenging the judgment and decree dated December 22,1995, passed in a Civil suit titled Jagdish v. Rajwanti. From the facts on record, it has emerged that the appellant/defendant is sister's son of Rajwanti-plaintiff. Rajwanti suffered a decree dated December 22,1995 in the suit filed by the appellant against her in respect to 1/10th share of the land measuring 246 kanals and 17 marlas. In terms of the aforesaid decree, the appellant

was declared as the owner in possession of 1/10th share on the basis of an alleged family settlement arrived at between the parties. The decree was a consent decree passed on the basis of the consent written statement and statement of Rajwanti recorded before the Court.

This decree came to be challenged by the respondent in Civil Suit No. 334 of 1997 before the Trial Court on two grounds, (i) that the decree has been procured by fraud and (ii) there was no pre-existing right of the defendant, hence, the decree required registration.

To establish fraud, it has been alleged that the defendant used to cultivate the land of the plaintiff on lease basis, which land was inherited by her from her father. The lease amount was payable @ Rs.10,000/- per year . The defendant did not pay the lease money for four years and the plaintiff along-with one Bhale Ram ,father-in-law and her husband's relative went to village Karontha to collect the lease money, where a settlement took place that the defendant will pay the arrears of lease money i.e. Rs.40,000/- for four years and also Rs.13,000/- for the year 1996-97 in Haryana Kshetriya Gramin Bank and the plaintiff shall make a statement to this effect. It is further alleged that signatures of the plaintiff were obtained on blank papers. The plaintiff was taken to the Court on December 19,1995,stating that the suit is about settlement between the parties. In the said suit, the plaintiff admitted the claim. The respondent also alleged that no summons were ever received by her nor the contents of written statements were read over to her. However, she has admitted that an amount of Rs.53,000/- was deposited in her name by the defendant in the bank on December 21,1995. While appearing in the Court as a witness, the plaintiff also stated that she is married and has two sons.

She stated that there was no family settlement between the defendant and the plaintiff. She also denied the allegations of the defendant that he spent the entire money for the marriage of the plaintiff and any family settlement was entered between the parties in respect to the suit land. The defendant pleaded that on the basis of a family settlement and in consideration of the maintenance amount of Rs.53,000/-, the plaintiff had suffered a decree in his favour. He also denied that the land was ever given to him on lease basis.

On the basis of evidence on record, the trial Court dismissed the suit of the respondent vide judgment and decree dated December 22,1998, on two grounds (i) that the plaintiff voluntarily suffered the decree in favour of the defendant, in such a case, family settlement is to be presumed (ii) that the consent decree was passed on the basis of pre-existing right, it did not require registration. The allegations of fraud were also not accepted by the trial Court.

Aggrieved of the judgment and decree of the trial Court, the plaintiff filed an appeal before the learned Additional District Judge, Rohtak, who has set aside the judgment and decree by reversing the findings recorded by the trial Court and passed the decree in favour of the plaintiff/respondent by allowing the appeal vide his judgment and decree dated November 23,2002. It is this decree which is impugned in this second appeal.

The lower Appellate Court while discussing the evidence on record, made the following observations-

“Rajwanti plaintiff has acquired 1/10th share in the land measuring 246 kanals 17 marlas of the revenue estate of village Karontha ,

District Rohtak from her father Bhagwan Singh, who died on April 08,1972. She had no brother and has three sisters. Defendant is one of her sister's son namely Smt.Darshna, who is resident of village Kansala. Plaintiff is married to one Suresh Kumar, resident of village Banwasa, Tehsil Gohana, District Rohtak. However, the land is situated in village Karontha, which is her paternal village. The plaintiff is living with her husband and has two sons, who are 14 years and 12 years of age. It has been observed by the lower Appellate Court that the defendant being plaintiff's sister's son does not constitute a family with him and, thus, the claim of the defendant that there was a family settlement between the parties, is not sustainable. The Appellate Court also accepted the claim of the plaintiff that she was made to sign on a blank paper and made to suffer a decree in favour of the defendant. The Court also observed that even summons were not issued to her. The suit was instituted on December 19,1995 and decided on December 22,1995. It has also been observed that there was no occasion for the plaintiff to have suffered a decree when she had a living husband and two sons. She was living in a happy married life. The Court also accepted the allegations of the plaintiff/respondent that a sum of Rs.53,000/- seems to have been deposited in her account as lease money. The Appellate Court also referred to the statement of the defendant/appellant wherein he stated that a sum of Rs. 53,000/- had been paid to her by way of maintenance and it has been categorically observed that when the plaintiff was living happily in her matrimonial home, and had sufficient landed property, there is no question of payment of maintenance by her sister's son. From the record, it has appeared that written statement was filed on December 19,1995. Her statement was also

recorded on the same day and and the decree came to be passed two days later. There was no report of the Process Server about service upon the plaintiff, who was defendant in the said suit. The Appellate Court, accordingly, held that even though, the decree may not require registration in view of the judgment of the Hon'ble Apex Court in the case of Bachan Singh v. Kartar Singh, 2002 (1) P.L.J, 442 , wherein it was held as under:-

"Consent decree that does not require registration when claim of the plaintiff is admitted by the defendant. The suit was decreed by the Court on the basis of admission. It was held that it is not correct that decree was a sale only to over come provisions of Registration Act. The consent decree passed by the Court- Not required to be registered under provisions of Registration Act. Section 17 (2) (6) of the Act".

I have heard learned counsel for the parties.

It is well settled law that the first Appellate Court is the final Court of fact. The first Appellate Court formulated its opinion regarding fraud on the basis of material on record and has referred to the entire evidence. It differs in its conclusion from the trial Court by giving proper reasonings.

For a valid family settlement, the Hon'ble Apex Court of India has laid down certain essential requirements in the case of Kale and others v. Deputy Director of Consolidation and others, (1976) 3 Supreme Court Cases 119 held as under :-

"In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following proposition :

(1)The family settlement must be a bona fide one so as to resolve

family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary ;

(4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family settlement made under the document and mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17 (2) of the Registration Act, and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title,claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title, but under the arrangement the other party relinquishes all its claim in favour of such a person and acknowledges him to be the sole owner, then the antecedents title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in

giving assent to the same;

(6) Even if bona fide disputes, present or possible which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the final arrangement is final and binding on the parties to the settlement".

Before a family settlement can be accepted as valid, it is necessary that it should appear to be bonafide and to resolve family dispute and rival claims, it is also necessary that members who may be parties to the family arrangement must have some antecedents title, claim or interest or even a possible claim in the property. Applying these tests to the facts of the present case, it does not seem that the appellant Jagdish had any antecedent title, claim or interest in the land in dispute. He is the plaintiff/respondent's sister's son. He cannot have any claim over the property of the respondent/ plaintiff, who has come to hold this property as a successor from her father. She is the married lady and has two sons. She is also happily placed in married life. There is no reason why she should have entered into any family arrangement with the defendant/appellant and deprive herself of immovable property and to the detriment of her husband and two sons. No family settlement has been established or proved by any evidence whatsoever what to say cogent and reliable evidence except the consent decree impugned in the suit. The Appellate Court, thus, rightly concluded that the defendant had no antecedent title, claim or interest in the property and thus the consent decree has not been considered to be based upon any family settlement. It also does not seem that family settlement was bonafide one or to resolve any family dispute. As a matter of fact, there is no family dispute between

the parties. The defendant being plaintiff's sister's son could not have possibly any dispute nor any dispute with regard to the property has been alleged by him. Notwithstanding the question whether the decree requires registration or not, manner in which the decree was secured, is not above grave suspicion. Thus, the findings recorded by the first Appellate Court that the consent decree suffers from vice of fraud and mis-representation, deserve no interference. I do not find any merit in this appeal, which is , accordingly, dismissed.

Oct 05,2007 (Permod Kohli)
RR Judge

Whether to be referred to Reporter: Yes.